Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Implementation of Section 224 of the Act	)	**WC Docket No. 07-245**
A National Broadband Plan for our Future	)	**GN Docket No. 09-51**

TO: THE COMMISSION

PETITION FOR RECONSIDERATION OF THE COALITION OF CONCERNED UTILITIES

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Detroit Edison
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Dated: June 8, 2011

SUMMARY

The *Coalition of Concerned Utilities* serves more than 17.5 million electric customers in 10 states and the District of Columbia and owns, in whole or in part, approximately 8.1 million electric distribution poles. We urge the Commission to reconsider its April 7 Order in the hope that specific aspects will be made more workable for the electric utility industry. Absent reconsideration, many utilities will be unable as a practical matter to comply with the Commission's new pole attachment requirements without serious adverse impact to the safety and reliability of electric service provided to the public. Numerous complaints likely will be filed with the Commission.

Make-Ready Deadlines. The new and unprecedented make-ready deadlines are unworkable and unwise and should be fundamentally reconsidered by the Commission or at a minimum revised to better recognize utility operational constraints. To bring the make-ready deadlines more into line with the reality of electric utility operations, the *Coalition* proposes that the lower limit on the number of attachment requests subject to the deadlines be reduced *from 300 to 100 poles*, and the upper limit reduced *from 3,000 to 500 poles*. Both limits should apply to attachment requests made by *all* attaching entities per month, not just by a single attaching entity. The deadlines should not apply to the extent that make-ready work would require any attacher that is not a cable television system or telecommunications service provider (*e.g.*, municipality) to move its facilities, or to pole replacements or the installation of new poles necessary to accommodate additional attachments. The Commission should expand the grounds to "stop the clock" and toll the make-ready deadlines (*e.g.*, seasonal storms, government permits, private property easements, preexisting safety violations) and should delay the implementation of

the deadlines established in the April 7 Order *by one hundred and eighty (180) days* and thereafter provide for a graduated phase-in of the make-ready deadlines.

Safety Issues. The Commission should allow utility pole owners to impose penalties for safety violations in the amount of *$200 per violation*, consistent with Oregon's rules. Utilities should be free to restrict future use of boxing and extension arms by imposing a policy applicable to all attaching entities going forward, regardless of whether the utility has chosen to do so in the past. Utilities also should be entitled to disallow any wireless pole top attachment by a communications attacher to the extent a utility disallows *any* wireless antenna of *any* type, including its own, to be installed on pole tops.

Attacher Rearrangement Issues. A number of related decisions in the April 7 Order should be reconsidered in light of the real world of electric utility operations (*e.g.*, use of electronic notification systems, reimbursement for costs incurred by pole owners in moving attachments, limitations on liability for mandatory relocation of existing attachments).

Joint Pole Owner Issues. Both owners of a jointly-owned pole – not just one – should be permitted to require separate permitting and payment processes.

Refunds. To avoid an unexpected and unjust result, refunds should not be allowed prior to the effective date of the Commission's April 7 Order.

All of the *Coalition's* members, like other electric utilities across the country, are responsible for the safe and efficient delivery of electric services to their consumers. None is in a position to sacrifice electric system safety and reliability as a cost of making its distribution poles available on an expedited basis for use by communications attachers. The *Coalition* urges the Commission to reconsider its rules accordingly.

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OF THE COALITION FOR CONCERNED UTILITIES

Consumers Energy, Detroit Edison, FirstEnergy Corp., Hawaiian Electric Co., NSTAR, and Pepco Holdings, Inc. (collectively, "the *Coalition of Concerned Utilities*" or *"Coalition"*), by their attorneys and pursuant to Section 1.429 of the Rules of the Federal Communications Commission ("FCC" or "Commission"),[1] respectfully petition the Commission for reconsideration of its Order released in this proceeding on April 7, 2011 ("April 7 Order").[2]

Collectively, the *Coalition* serves more than 17.5 million electric customers in 10 states and the District of Columbia and owns, in whole or in part, approximately 8.1 million electric distribution poles. To accommodate in a realistic way both the attachers' requirements and those of electric systems, the *Coalition* urges the Commission to reconsider several aspects of its April 7 Order so that specific aspects will be made more workable in the real world of the electric utility industry. The *Coalition's* request is based not on an opposition to broadband

[1] 47 C.F.R. §1.429.

[2] *Report and Order and Order on Reconsideration*, FCC 11-50; Implementation of Section 224 of the Act (WC Docket No. 07-245); A National Broadband Plan for Our Future (GN Docket No. 09-51), April 7, 2011. The Order was published in the Federal Register on May 9, 2011, 76 Fed. Reg. 26620.

deployment, but on serious concerns regarding the impact of the Commission's decisions on the day-to-day operations of electric utility systems across the country. Absent reconsideration, however, the *Coalition* is concerned that many utilities will be unable as a practical matter to comply with the Commission's new pole attachment requirements without serious adverse impact to the safety and reliability of electric service provided to the public and a corresponding flood of complaints to the Commission.

I. BACKGROUND ON *COALITION* MEMBERS

The *Coalition of Concerned Utilities* is composed of a diverse group of electric utility companies in terms of size, attacher relationships and operational characteristics. The following is a brief description of the *Coalition* members filing in this proceeding:

Consumers Energy provides electric and natural gas service to more than six million people in Michigan's lower peninsula. Consumers Energy owns, in whole or in part, approximately 1,500,000 utility poles.

Detroit Edison provides electric service to 2.1 million customers in southeastern Michigan. Detroit Edison owns, in whole or in part, one million utility poles.

FirstEnergy Corp. provides electric service to six million customers throughout 67,000 square miles of Ohio, Pennsylvania, West Virginia, Maryland, Virginia and New Jersey. FirstEnergy provides this service to its customers through ten electric utility operating companies.[3] FirstEnergy owns, in whole or in part, approximately 3,900,000 utility poles.

Hawaiian Electric Co., and its subsidiaries, Maui Electric Company, Ltd, and Hawaii Electric Light Company, Inc., provide electricity to approximately 440,000 customers on the

[3] FirstEnergy's operating companies are Jersey Central Power and Light, Metropolitan Edison, Ohio Edison, Pennsylvania Electric Company, Pennsylvania Power Company, Cleveland Electric Illuminating Company, Toledo Edison, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company.

islands of O`ahu, Maui, Hawai`i Island, Lana`i and Moloka`i. Hawaiian Electric owns, in whole or in part, approximately 180,000 electric distribution poles.

NSTAR provides electricity to approximately 1.1 million customers in 81 communities throughout Massachusetts. NSTAR owns, in whole or in part, 388,000 electric distribution poles.

Pepco Holdings, Inc., and its subsidiaries, Pepco, Delmarva Power, and Atlantic City Electric, provide electricity to approximately 1.9 million customers in Delaware, New Jersey, Washington, D.C. and Maryland. Pepco owns, in whole or in part, 700,000 electric distribution poles.

All of these *Coalition* members are responsible for the safe and efficient delivery of electric services to their consumers. None is in a position to sacrifice electric system safety and reliability as a cost of making its distribution poles available on an expedited basis for use by communications attachers.

II. THE COMMISSION SHOULD RECONSIDER THE MAKE-READY DEADLINES

For the first time, the Commission's April 7 Order established a series of stringent deadlines to govern each step of the make-ready process, each of which represents a significant, new burden for electric utilities in accommodating requests for attachments.

The following deadlines were created for each stage of the process:

Stage 1: Survey: 45 days (with an additional 15 days for "large orders")
Stage 2: Estimate: Within 14 days of receiving the results of the engineering survey
Stage 3: Attacher Acceptance: Up to 14 days for the attacher to approve the estimate and provide payment
Stage 4: Make-Ready: 60 days (or 105 days in the case of "large orders"); for wireless attachments above the communications space, 90 days (or 135 days in the case of "large orders"), with

> 15 additional days after the make-ready period to complete make-ready work.[4]

As the *Coalition* explained in its Comments, Reply Comments and ex parte submissions in this proceeding, imposing dramatic new make-ready deadlines of this nature and scope upon electric utilities across the country makes little sense in the real world of electric utilities.[5] For all intents and purposes, they are unworkable.[6]

Should the Commission nevertheless proceed with imposing these types of make-ready deadlines, they at least should be revised as explained below to better recognize utility operational constraints and to reduce the expected burden on utilities as well as the Commission that will result from an inevitable flood of pole attachment access complaints.

A. Reduce the Number of Poles Subject to Deadlines

The April 7 Order sets an unworkable and unreasonably high number for poles subject to the deadline process:

> We apply the timeline to orders up to the lesser of 0.5 percent of the utility's total poles within a state or 300 poles within a state during any 30-day period. For larger orders—up to the lesser of 5 percent of a utility's total poles in a state or 3,000 poles within a

[4] April 7 Order, at ¶ 22.

[5] *See, e.g.*, Comments of the Coalition of Concerned Utilities (filed in this proceeding on August 16, 2010), at 11 (hereafter, "August 16 Comments") and Reply Comments of the Coalition of Concerned Utilities (filed in this proceeding on October 4, 2010), at 3 (hereafter "October 4 Reply Comments").

[6] The Commission's deadlines will insert the agency itself into the daily decision-making processes of electric utilities across the country without fully considering the many differences among electric utility pole owners, the even greater differences between electric utility pole owners and ILEC pole owners, and the numerous, justifiable causes of delay not recognized as "authorized exceptions" in the make-ready process that vary from utility to utility and pole attachment request to request. Imposing artificial, inflexible deadlines makes little sense in the operational world of electric utilities and could have chaotic and catastrophic consequences. There are too many constraints outside of electric utility control, such as the volume of make-ready requests, weather conditions, service interruptions, local and state requirements, private property issues, environmental regulations, road construction and road permitting, unauthorized attachments and safety violations, the unresponsiveness of existing attachers, and the many delays caused by the new attacher itself, to hold utilities liable for compliance in virtually all cases. Hard and fast rules applicable across-the-board to all utilities ignore the unique operational characteristics of individual systems, not to mention the interests of State Public Utility Commissions and local regulators, many of which have imposed specific and potentially inconsistent requirements of their own to ensure safe and reliable utility operations of electric utility distribution systems within their respective jurisdictions. For all of these reasons, the Commission's make-ready deadlines are unworkable and unwise and should be fundamentally reconsidered by the Commission.

> state—we add 15 days to the timeline's survey period and 45 days to the timeline's make-ready period, for a total of 60 days. For in-state orders greater than 3,000 poles, we require parties to negotiate in good faith regarding the timeframe for completing the job.[7]

The Commission suggests that these numbers are manageable by stating that "an attacher always has the ability to submit requests of up to 3,000 poles in any 30-day period, so an attacher could start a 9,000 pole order within a single state through the timeline over three successive months."[8]

These numbers, however, are far from manageable from the electric utility perspective. To put such a huge number of pole attachment requests in context, for the last three years NSTAR has processed applications for communications companies to attach to 4-5,000 poles per year, which averages approximately 325-425 per month. For the past four years, Consumers Energy has processed applications to attach to 6,000 poles per year, or 500/month. Detroit Edison issues permits every year to attach to 12,000-15,000 poles, or 1000-1250/month.[9] A 3,000-pole request in a given month would be 2.4 times, six times, and seven times the normal monthly workload for Detroit Edison, Consumers Energy and NSTAR, respectively.[10] A 9,000-pole request over three months would double NSTAR's workload for the entire year, exceed Consumers Energy's annual workload by 50% and constitute as much as 75% of Detroit Edison's annual workload.

Further, there is no "cap" on the number of sequential requests that a single attacher may submit every 30 days, nor is there any limit on the number of requests that may be submitted

[7] April 7 Order, at ¶ 63.
[8] *Id*.
[9] Five percent of the poles owned by NSTAR, Consumers Energy and Detroit Edison is 19,400 poles, 75,000 poles and 50,000 poles, respectively.
[10] Looked at another way, considering that a line of approximately 20 poles stretches one mile, a 3,000-pole request would require survey work and make-ready construction to be performed on *150 miles of pole line*, which is an enormous undertaking for every electric utility pole owner in the country.

collectively by the attacher community in any given period. As a result, multiple attachers could bombard a single utility with multiple 3,000 pole requests every month, each of which would be subject to the Commission's deadlines.

Every utility is operated differently, but no utility can staff adequately for an unknown volume of make-ready work.[11] Utilities do not have unlimited resources sitting idle while waiting for the next pole attachment application to arrive. Instead, utility crews and contractors are constantly at work maintaining existing and new lines, moving from place to place, responding to emergencies, balancing conflicting demands on their time and resources and performing make-ready and other assignments as planned and coordinated in advance. All of this extra work performed for third party attachers pursuant to Commission fiat is in addition to the normal electric work that utility personnel must perform for their own consumers. Deadlines associated with such enormous make-ready requests very easily could prevent the utility from performing its own electric work, subjecting the utility to potentially stiff penalties from its state public utility commission, not to mention complaints of inadequate service by electric utility consumers. A flood of FCC complaints also likely would result.

To bring the make-ready deadlines more in line with the reality of electric utility operations, the *Coalition* proposes that the lower limit on the number of attachment requests subject to the deadlines be reduced *from 300 to 100 poles*, and the upper limit be reduced *from 3,000 to 500 poles*. These limits should be on the number of poles for which attachment requests may be made by *all* attaching entities per month, not just by a single attaching entity. These numbers would create a much more manageable workflow for utilities providing core

[11] Detroit Edison, for example, received a 9,000-pole job last year as a result of Federal stimulus funding. The project was located in a rural region and Detroit Edison had to find five full-time equivalent personnel to relocate to that region for six months to get the job done. The utility searched its entire workforce to locate qualified personnel, working through the International Brotherhood of Electric Workers union. This process of simply locating qualified personnel took two months.

electric services to consumers throughout the country while preserving the right of attachers to expect reasonably prompt responses to their make-ready requests.[12]

B. Exclude Poles Requiring the Rearrangement of Non-Section 224 Attachers From the Deadlines

As the Commission's make-ready deadlines acknowledge, the accommodation of new attachments often requires other attachers on the pole to move their facilities before the new attachments may be affixed to the pole. The conduct of these other attachers, however, is far beyond the pole owner's control.[13]

While the problem exists with respect to all existing attachers, it is particularly difficult to coordinate with attachers that have *no* pole attachment workforce and limited resources, such as fire departments, highway departments (*e.g.*, traffic control devices), school districts, police

[12] Other states have considered these issues and established more reasonable make-ready deadlines than those promulgated by the Commission. Vermont, for example, provides for a sliding scale that begins with at least 180 days to complete the make-ready estimate and perform make-ready work, "unless otherwise agreed by the various parties, and except for extraordinary circumstances and reasons beyond the Pole-Owner's control." Vermont Public Service Board, Rules 3.708 (B)(2), (C) and (E). In Oregon, if make-ready work requires more than 45 days to complete or if there are more than 50 poles in an application, the parties must negotiate a mutually acceptable longer period to complete the work. See Oregon Administrative Rules §§ 860-028-0020(32), 860-028-0100(5), (7). In Utah, pole owners must provide make-ready estimates for applications of 20 poles or less within 45 days, and must complete make-ready work within 120 days after the initial payment of the make-ready estimate. For applications greater than 20 poles but less than 300 (or .5% of the owner's poles in Utah, whichever is lower), the make-ready estimate is due within 60 days and construction must be completed 120 days after payment. For applications greater than 300 (or .5%) but less than 3,000 (or 5%, whichever is lower), the make-ready estimate is due in 90 days and the time for construction is extended to 180 days after payment. For applications greater than that, the timeframes are negotiated. All applications within a single month are counted as a single application, and the pole owner has the flexibility of justifying longer timelines based on anticipated delays. See Utah Administrative Code, § R746-345-3.C. Following a lengthy rulemaking proceeding, the New Hampshire PUC adopted pole attachment regulations that require most make-ready work to be completed by pole owners within 150 days following pre-payment of make-ready estimates, while the estimates themselves (for 200 poles or less) must be provided within 45 days after application. See New Hampshire Code of Administrative Rules, Parts Puc 1303.12 and 1303.04. These states have taken far different and better approaches to make-ready deadlines than the Commission. They have avoided "one size fits all" requirements by implementing varying deadlines based upon the different needs of the pole owners and attachers.

[13] Existing attachers, for instance, may not make themselves available for the ride-outs necessary to coordinate their rearrangements; they may not be responsive to new attachers; or they may provide unreasonably high make-ready cost estimates. Pole owners are powerless to compel cooperation by existing attachers, some of whom, as recognized by the Commission, compete with the proposed attachers in offering similar services.

departments, municipalities and others.[14] Neither pole owners nor new attachers typically have any contractual or other right to move such facilities.[15] Based on the experience of *Coalition* members, these types of entities tend to be highly unresponsive to requests to rearrange their facilities. To the extent these facilities must be rearranged to accommodate a new attacher, utilities will be prevented through no fault of their own from meeting any make-ready deadlines.

The Pole Attachment Act allows the Commission to regulate only the relationships between pole owners, cable companies and telecommunications providers; it does not authorize the Commission to regulate the relationship between pole owners and other non-cable, non-telecom providers such as municipalities. The *Coalition* therefore requests that the Commission reconsider its make ready deadlines to specify that they do not apply to the extent that make-ready work would require any attacher that is not a cable television system or telecommunications service provider (*e.g.*, municipality) to move its facilities.

C. Exempt Pole Replacements and the Installation of New Poles from the Deadlines

The Pole Attachment Act allows utilities to deny access for lack of capacity:

> Notwithstanding paragraph (1), a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.[16]

[14] Unlike the FCC, the State of Connecticut Department of Public Utility Control ("DPUC") had the authority to order a "collaborative effort" among attaching entities and required them to complete necessary transfers in 14 days. The FCC has no similar authority.

[15] On Hawaiian Electric's poles, once a municipality or the state is attached to the pole, it becomes a joint owner of the pole like Hawaiian Electric.

[16] 47 U.S.C. §224(f)(2) (2010).

Electric utilities, in other words, need not expand capacity to accommodate attaching entities.[17] The Commission agrees. As explained most recently in the April 7 Order: "[A]s the court noted in *Southern Company*, mandating the construction of new capacity is beyond the Commission's authority."[18]

Some pole attachment applications request utilities to replace poles with taller poles or to install new poles for the first time. The installation of new poles as well as the replacement of short poles with taller poles constitutes an obvious expansion of capacity.

Since utility pole owners are not required to expand capacity to accommodate attaching entities, the Commission is not at liberty to impose make-ready deadlines governing that process. Accordingly, the *Coalition* requests that the Commission confirm that the make-ready deadlines do not apply to pole replacements or to the installation of new poles necessary to accommodate additional attachments. Such a ruling would make the April 7 Order consistent with the May 20, 2010 Order and FNPRM, in which the Commission recognized that make-ready deadlines do not apply to pole replacements.[19]

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[17] This determination has been upheld by the 11th Circuit. In *Southern Company v. FCC*, utility petitioners objected to the Commission's 1999 decision that "utilities must expand pole capacity to accommodate requests for attachment in situations where it is agreed that there is insufficient capacity on a given pole to permit third-party pole attachments." *Southern Co. v. FCC*, 292 F.3d 1338, 1347 (11th Cir. 2002), quoting *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996), *aff'd*, Order on Reconsideration, 14 FCC Rcd 18049 (1999). The 11th Circuit held that the plain language of Section 224(f)(2) explicitly prevents the Commission from mandating pole replacements: "When it is agreed that capacity is insufficient, there is no obligation to provide third parties with access to that particular 'pole, duct, conduit, or right-of-way.'" *Southern Co. v. FCC.*, 292 F.3d 1338, 1347 (11th Cir. 2002). The court further noted that "the FCC's attempt to mandate capacity expansion is outside of its purview under the plain language of the statute." *Id.*

[18] April 7 Order at ¶ 95 ("The 'terms and conditions' of pole attachment encompass the process by which new attachers gain access to a pole, however, and setting deadlines and remedies for that process has been held not to constitute a mandate to expand capacity.").

[19] *In re Implementation of Section 224 of the Act: A National Broadband Plan for Our Future*, Order and Further Notice of Proposed Rulemaking, WC Docket No. 07-25 *et al.*, FCC 10-84 (May 20, 2010), at ¶ 33 ("May 20, 2010 Order and FRPRM") ("We also incorporate … the Coalition Proposal request to exclude from this timeline pole replacement . . ..").

D. Postpone Implementation of the New Make-Ready Deadlines for 180 Days, Then Gradually Phase Them in to Allow Utility Pole Owners Sufficient Time to Revise Their Operating Procedures

In order to meet the demands of the Commission's new and unprecedented make-ready deadlines, electric utility pole owners will need sufficient time to recast completely their pole attachment application processes and to develop appropriate operating procedures for handling the new requirements. Decisions must be made whether the new deadlines will require the make-ready engineering and survey work to be done internally or with outside labor, and whether attacher-supplied data may be relied upon. Utility engineering departments must identify contractors to perform such work and establish processes that will govern it. Utility personnel throughout each utility must be trained regarding the new requirements.

Internal scheduling and metrics must be revised and reports created to track the multiple timing issues pertaining to every one of the hundreds (and oftentimes thousands) of make-ready requests that utilities process each year. To develop these metrics, each of the multiple intervening steps must be monitored, including when each job was assigned to which persons responsible for the next phase of the make-ready project.

To provide the Commission with an idea of the scope of this undertaking, Pepco Holdings, Inc. developed the four-page spreadsheet attached hereto at Exhibit A with the sole purpose of keeping track of the timelines associated with what at that time had been 78 different tasks associated with only one make-ready project. Larger and more complicated projects will require even more checkpoints. The Commission's new requirements also will add substantially to the notice and other processes that must be monitored for compliance.

In order to provide sufficient time to plan for and accommodate attachers and the new deadlines, the *Coalition* requests that the Commission delay the implementation of the deadlines established in the April 7 Order *by one hundred and eighty (180) days*. In light of the

unprecedented nature and scope of the Commission's new requirements, this modest transition period is not unreasonable.

In addition, once these deadlines become effective, utility pole owners and attaching entities alike will need time in which to see how the process works in practice. No one can predict with certainty the amount of work that will be requested or the real world experiences ahead. The operational processes designed by utilities to meet the deadlines will need to be tested and revised as they are implemented. A phase-in, rather than an abrupt cut-over, is appropriate.

To provide time to revise the process based on experience, the *Coalition* requests that the Commission provide a graduated phase-in of the make-ready deadlines. For the first six months that the deadlines are effective, the lower limit on pole numbers subject to the deadlines should be *50 poles per month*, and the upper limit should be *250 poles per month*, for applications by all attaching entities. After the initial six months have elapsed, these numbers can then be increased to the *100-pole* and *500-pole* limits requested by the *Coalition* above.

E. Expand the Definition of Events that May "Stop the Clock"

The April 7 Order established a "good and sufficient cause" standard for events that can be used to stop the make-ready clock, but identifies only a single event – "an emergency that requires federal disaster relief" – as an example that would qualify.[20] No other event is identified, even though "good and sufficient cause" would appear to be a broad exception.

Based on the realities of the make-ready process, the *Coalition* asks the Commission to reconsider its rules regarding delays in the make-ready process. The following events provide "good and sufficient cause" and should be considered grounds to "stop the clock" and toll the make-ready deadlines:

[20] April 7 Order, at ¶ 68.

1. Seasonal Storms

The Commission characterizes seasonal storms as "routine"[21] and not an excuse for tolling the make-ready deadlines. For electric utilities, however, seasonal storms that interrupt the delivery of electric power to hundreds if not thousands of customers are anything but "routine" and require immediate emergency manpower response.

When large seasonal storms occur,[22] power companies are stretched extremely thin to make sure that electric service is restored as soon as possible. During a storm outage, the utility's line construction resources, engineering resources, dispatch personnel, supervisors, managers, meter readers, highway workers, salaried staff and others are pulled from their regular duties to assist in service restoration efforts anywhere that the utility serves, including other operating companies owned by the utility. This "all hands on deck" approach is common to all electric utilities and it precludes the performance of any new make-ready work in the interim, including make-ready work requested by communications attachers.

Not only do utilities apply this "all hands on deck" approach to the restoration of their own local service outages, they also routinely lend line crews, along with design and engineering personnel and management expertise, to assist other electric utilities in the restoration of their power. These mutual assistance arrangements are necessary because the extraordinary nature of storm restoration work often requires far more personnel than even the utility's own fully reassigned personnel. Attached at Exhibit B is a list provided by FirstEnergy of the multiple other electric companies throughout much of the country that have entered into mutual assistance agreements with FirstEnergy to cooperate in the recovery from weather

[21] April 7 Order, at ¶ 68.
[22] *See, e.g.*, "'Snowmageddon' slams D.C.; hundreds of thousands without power," CNN.com, February 5, 2010, http://articles.cnn.com/2010-02-05/us/winter.storm_1_wet-snow-power-saturday-morning-dominion-virginia-power?_s=PM:US (last accessed June 7, 2011).

events and other natural disasters. These are not simple "seasonal outages" that can be superseded by the Commission's make-ready deadlines.

To recognize these storm restoration realities, the *Coalition* requests that the Commission adopt an objective test for these events: *if a company's normal internal staffing is not available due to a weather event or other force majeure event, the make-ready clock should be tolled.* This tolling must extend to an appropriate number of days following such an event, as well, since utilities must provide rest to overextended workers who have been working 16-hour days to help their own as well as neighboring or even distant utilities and the public they serve in recovering from a storm or other weather event.

2. Government Permits and Private Property Easements

The Commission also should stop the make-ready clock for pole attachment projects that are hindered by the local government permit process, which also rests far beyond the control of electric utilities and can create uncontrollable delays in attachment projects. For example, make-ready projects may require a utility truck to be parked on a road, which requires a permit from the city or county or state department of transportation. Without the permit, there can be no parking. Police may need to be hired to direct traffic or otherwise protect a work area. Without such assistance, there can be no work. Environmental permits may be required by the state environmental agencies and/or the federal Environmental Protection Agency. Without the permits, the work cannot occur.

Property rights may need to be obtained to authorize the attachments as requested by the attacher because, for example, a guy wire may need to be installed on private property. Without the private easement, the attachment cannot occur.

All of these types of occurrences (and this is not an exclusive list) raise issues and cause delays that an electric utility cannot control. The utility should not be responsible for any such delays that preclude compliance with the new deadlines.

3. Preexisting Safety Violations

The make-ready deadlines also should be tolled if existing attachments are found to be in violation of safety codes, at least until the time it is agreed which attaching entity should be responsible for paying to correct the safety violation. Utilities did not create those violations and should not be held responsible for fixing them within the new deadlines.

Coalition members, like most utilities, have encountered numerous preexisting safety violations on poles to which new attachers seek access. Often there is considerable dispute about which existing attacher may have caused the safety violation. To alleviate these disputes and to allow the parties to get on with the necessary make-ready work, the Commission should establish three presumptions regarding who may have caused the existing violation. *First*, to the extent that an unauthorized attachment exists on the pole, the presumption should be that the unauthorized attacher caused the safety violation. *Second*, the attacher whose attachment is not in compliance with the rules should bear the responsibility to pay to correct the violation (*i.e.*, the attachment should be taken "as found"). *Third*, the deadline clock should not start to "run" under these circumstances until the safety violation has been fixed by the causer.

Implementing these presumptions will alleviate the considerable delay associated with determining who may have caused a safety violation that must be fixed before an attaching entity can gain access to a pole. Without these presumptions, disputes will continue indefinitely while the affected utility is unable to take action on the new attachment request.

4. Inadequate Route Design of New Attacher

After the acceptance of an attacher's application, and while a utility is performing its initial engineering survey of the new attachment request, it is common for the utility to find deficiencies in the attacher's route design that must be corrected before the electric utility can complete its engineering design. Examples include: (1) attachment requests that specify attachment heights on the pole that would result in inadequate ground clearances; (2) inadequate spacing of attachments on the pole, or the crossing of other attachments on the pole; and (3) lack of appropriate guying for the new attacher's facilities. These issues need to be resolved by the new attacher before utility engineering design can be finalized and they cause delays that an electric utility cannot control. Where such deficiencies exist, the make-ready deadlines should be restarted beginning on the date that the attacher's route design is corrected and resubmitted.

III. SAFETY ISSUES

While the *Coalition* appreciates that the Commission adopted rules in the April 7 Order that finally allow an utility to combat the massive problem of unauthorized attachments, [23] noticeably absent from the decision is any recognition of the corresponding problem of safety violations. As with unauthorized attachments, utilities need the regulatory authority to combat the endemic problem of attacher safety violations.[24]

A. Apply Oregon's Safety Violation Penalties as Well as Unauthorized Attachment Penalties

While the April 7 Order cites with approval Oregon's rules allowing utility pole owners to incorporate unauthorized attachment penalties into pole attachment agreements,[25] the

[23] April 7 Order, at ¶115.
[24] August 17 Comments, at 93.
[25] April 7 Order, at ¶115.

Commission on reconsideration also should rule that utility pole owners may impose penalties for safety violations in the amount of $200 per violation, again consistent with Oregon's rules.[26]

In today's competitive environment, speed-to-market and cost cutting are the forces driving the rollout of new communication services. Electric system safety, reliability and efficiency, on the other hand, are alien to this environment.[27]

Contractors hired by cable companies, CLECs and ILECs cannot be depended on to keep the electric distribution system operating safely and reliably. Utilities need regulatory tools to combat the problem and the Commission must promote responsible behavior on the part of those who are granted mandatory access. To that end, the Commission should allow utility pole owners to impose penalties for safety violations in the amount of *$200 per violation*, again consistent with Oregon's rules.[28]

B. Apply The Unauthorized Attachment and Safety Violation Penalties Automatically Regardless of the Pole Attachment Agreement

Rather than providing that Oregon's unauthorized attachment penalties apply automatically to electric utilities and communications attachers that are subject to the FCC's jurisdiction, the April 7 Order requires that they first be imbedded in a pole attachment

[26] Or. Admin. R. § 860-028-0150(1)-(2) (2008).

[27] Construction crews hired by cable companies and telephone companies often are paid to string cables over utility poles per mile or per pole (i.e., in a manner that rewards speed but not safety). Distance covered, not quality of work, is the prime objective. The faster they string cable, the more they get paid. Noncompliant attachments "count" as much as compliant ones. Adding to the problem, communications attachers often appear to be poorly trained with respect to NESC compliance. They take shortcuts that make their jobs easier but do not conform with established safety and construction practices. Unlike electric companies, many cable companies, CLECs and emerging telecommunication service providers do not even have in place established safety programs or qualified engineering and safety departments. Minimal oversight of work contracted by attachers is not unusual. As a result, *Coalition* members have encountered countless NESC violations caused by attachers, including clearance violations, improper pole guying, ungrounded messenger wires and other equipment, excessive overlashing, improper use of boxing and extension arms, improper installation of equipment, improper hole drilling, the displacement and damage of utility equipment, customer outages, and a host of additional safety violations and poor construction practices. In addition, huge bundles of coiled cables, wires duct-taped to poles and splices covered by garbage bags are not uncommon, causing an eyesore at a minimum but more importantly wind and ice-loading concerns.

[28] Or. Admin. R. § 860-028-0150(1)-(2) (2008).

agreement before they can be enforced.[29] This is an unnecessary limitation that is incongruous with the other regulations promulgated in the April 7 Order that are applicable automatically. It should be revised on reconsideration.

It is highly unlikely that any attaching entity will be eager to agree to new unauthorized attachment penalties or to the new safety violation penalties unless compelled. Instead, it makes much more sense to impose automatically all of the new regulations as a package, including the unauthorized attachment and safety violation penalties. To remedy this concern, the *Coalition* requests on reconsideration that the Commission revise its April 7 ruling to state that the Oregon unauthorized attachment penalties and safety violation penalties apply automatically to all utilities and attachers subject to Commission jurisdiction.

C. Allow Pole Owners to Discontinue Or Limit Use of Boxing and Extension Arms Going Forward, Regardless of Past Policy

With respect to boxing and extension arms, the April 7 Order clarifies that:

> a utility may not simply prohibit an attacher from using boxing, bracketing, or any other attachment technique on a going forward basis where the utility, at the time of an attacher's request, employs such techniques itself. As Fibertech points out, even a policy that is equally applied prospectively is discriminatory in the sense that it disadvantages new attachers…. A utility may, however, choose to reduce or eliminate altogether the use of a particular method of attachment used on its poles, including boxing or bracketing, which would alter the range of circumstances in which it is obligated to allow future attachers to use the same techniques.[30]

This ruling may be read to require utility pole owners to require attaching entities to remove all instances of boxing, extension arms and other attachment techniques permitted in the past if it ever wishes to prohibit such use in the future. Such an interpretation, however, would require utilities wishing to control widespread abuse of boxing and extension arm use to disrupt

[29] April 7 Order, at ¶ 118.
[30] April 7 Order, at ¶ 227 (footnotes omitted).

existing attachments and force existing attachers to expend considerable time and resources in removing their existing attachments.

The *Coalition* requests clarification that utilities may restrict future use of boxing and extension arms on their poles by imposing a new policy applicable to all attaching entities going forward, regardless of whether the utility has chosen to do so in the past. This clarification would eliminate any need for attaching entities to remove or otherwise modify existing attachments. This is not "discriminatory," as Fibertech claims, but treats similarly situated attachers similarly while saving existing attachers considerable expense.

D. Allow Utilities to Prohibit Pole-Top Attachments if Nondiscriminatory

With respect to the attachment of wireless antennas to electric utility poles, the April 7 Order stated that "a wireless carrier's right to attach to pole tops is the same as it is to attach to any other part of a pole."[31] In response to wireless attacher complaints that some utilities assert blanket prohibitions to pole top attachments of wireless antennas, the Commission ruled that such blanket prohibitions are not permitted.[32]

If a wireless attacher's rights to attach to pole tops are to be the same as its rights to attach to any other part of the utility pole, then the electric utility pole owner's judgment with respect to the effect of those wireless installations on electric utility "safety, reliability and generally applicable engineering purposes" must be respected, as required by the Act, as it is on other parts of the pole.[33]

Some utilities like Consumers Energy and FirstEnergy do not allow *any* entity, including the electric utility pole owner itself, to install wireless antennas on pole tops. NSTAR, in fact, is

[31] April 7 Order, at ¶ 77.
[32] April 7 Order, at ¶ 77.
[33] 47 U.S.C. § 224(f)(2).

in the process of taking its antennas down from the tops of utility poles with high voltage primary electric conductors attached because they have become a safety issue. These are legitimate safety considerations well within the purview of individual electric companies.

The Act requires utilities to provide nondiscriminatory access to their facilities but does not override a utility's right to make "safety, reliability and generally applicable engineering" decisions. Consistent with these requirements, the *Coalition* requests the Commission rule on reconsideration that to the extent a utility disallows *any* wireless antenna of *any* type, including its own, to be installed on pole tops, it should be entitled to disallow any such proposed installation by a communications attacher.[34] To hold otherwise would insert the Commission into a statutory area ("safety, reliability and generally applicable engineering") reserved solely for electric utilities.

IV. ATTACHER REARRANGEMENT ISSUES

To facilitate both broadband deployment and the safe and efficient distribution of electric utility services, a number of related decisions in the April 7 Order should be reconsidered in light of the real world of electric utility operations.

A. Allow Utility Pole Owners to Require Attacher Participation in NJUNS, SPANS or Some Other Electronic Attachment Notification System

The April 7 Order adopts the rule that utilities must notify all existing attachers of pending make-ready when a new project is set to enter the make-ready phase.[35] If a series of poles has multiple attachers, this notification process can be difficult and time-consuming, making it problematic to provide the "immediate" notification required by the rules.

[34] Of course, the option to attach the antenna in the communications space would still be available.
[35] April 7 Order, at ¶ 60 ("Upon receipt of payment from the attacher, we require a utility to notify immediately and in writing all known entities with existing attachments that may be affected by the planned make-ready.")

NJUNS, the National Joint Use Notification System, is an extremely useful tool for pole owners and attachers that ensures both owners and attachers will keep informed of the progress of their pole attachment projects.[36] Additionally, the system tracks existing attachments, so if any attachers need to be moved or have their attachments modified, NJUNS can quickly and efficiently notify them.[37] To be successful, however, participation must involve both utilities and attachers alike.

On reconsideration, the *Coalition* requests that the Commission allow utility pole owners to require all attachers to participate in NJUNS or whatever other electronic notification system the utility establishes, to efficiently facilitate the notification process for new attachments. Without electronic notification, "immediate notification" will be impossible in the real world.

B. Reimburse Pole Owners If They Are Forced To Move Existing Attachers

The April 7 Order allows pole owners to move existing attachments if the existing attachers do not move their attachments in a timely manner.[38] Although this work by electric utility pole owners certainly qualifies as make-ready performed on behalf of a new attacher, it is not clear from the April 7 Order that pole owners must be reimbursed for it as they are for any other make-ready work incurred on behalf of attachers.

On reconsideration, the Commission should specify that pole owners are entitled to be reimbursed by the new attacher for moving existing attachments if the existing attachers do not move their attachments in a timely manner.

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[36] More information on NJUNS is available at http://www.njuns.com/ (last accessed June 7, 2011).
[37] NJUNS is available to assist in satisfying the Commission's requirement for immediate notification. Other commercial electronic notification systems such as SPANS are also available to assist in this process. More information on SPANS is available at http://windlakesolutions.com/spans.htm (last accessed June 7, 2011).
[38] April 7 Order, at ¶ 30.

C. Exclude Utility Pole Owners From Liability When Existing Attacher Facilities Must Be Moved By The Owner Or A Contractor Hired By The New Attacher

If the make-ready deadlines are not met, the April 7 Order requires utility pole owners to move existing communications attachments themselves or allow the new attacher to hire a contractor to move them.[39]

This mandatory rearrangement or relocation of existing attachments by other entities may result in damage to existing attachments, interruption of service to customers, or even injury or death to workers on the pole or the public at large. As the owner of the pole, electric utilities are commonly included as defendants in any court action seeking remedies for such injury or damage.

The Commission on reconsideration should rule that utility pole owners cannot be held liable for damages, including consequential damages, resulting from the mandatory rearrangements or relocations required by the new rules.

V. JOINT POLE OWNER ISSUES

The April 7 Order recognized the unique considerations applicable to jointly-owned poles (*i.e.*, poles owned by both electric utilities and ILECs). To facilitate ease of administration of the new rules, the *Coalition* recommends the following decisions on reconsideration.

A. Ease the Requirement That Joint Owners of Poles Coordinate Application and Payment Processes

The April 7 Order declined to require joint owners of individual poles to appoint a managing utility of each pole but nevertheless declared that "utility procedures requiring attachers to undergo a duplicative permitting or payment process to be unjust and

[39] April 7 Order, at ¶ 30.

unreasonable."[40] These findings are inconsistent and counterproductive, and should be abandoned by the Commission on reconsideration.[41]

As explained in the *Coalition's* Comments, this requirement to delegate the permitting and payment process to one of the joint owners is unworkable and would provide little real benefit to attaching entities.[42] Both owners of a jointly-owned pole should be permitted to require separate permitting and payment processes, since each has unique requirements.[43] Should the Commission decide instead to impose this burdensome and ineffective requirement on joint pole owners, the *Coalition* requests a specific ruling that all related costs incurred by the pole owners be recoverable.

B. Allow Each Owner To Independently Opt for Stricter Boxing and Extension Arm Restrictions

With respect to boxing and extension arms on jointly-owned poles, the April 7 Order clarifies that:

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[40] *Id.*

[41] Requiring joint pole owners to eliminate "duplicative" permitting or payment processes in effect requires them to appoint a single managing utility for that application request.

[42] August 17 Comments, at 72.

[43] The two different types of pole owners (electric and communications) are engaged in different businesses and operate independently. It makes no sense and would be unsafe as a practical matter to require one entity to engage in decisions affecting the other's business through unilateral control of the jointly owned pole distribution system. The two pole owners do not possess sufficient knowledge of each other's operations, and one joint owner may not place the same priority on certain items as does the other. The nature of electric distribution service, for example, makes electric utilities extremely safety conscious regarding work that takes place in or near the power space. If the electric utility were a non-managing joint owner, it would be difficult to ensure that the managing ILEC joint owner were similarly focused on electric distribution safety issues. There are other practical obstacles to this proposal, as well. Since an ILEC has no expertise in electric utility design and operations, it would be unable to ensure that the electric utility's standards are being met. For the same reason, the ILEC cannot develop an electric utility's work scope and cost estimate for make-ready or defend the electric utility's cost estimates, if it were inclined to defend another utility's costs. If both pole owners were entitled to attachment fees, one owner would have to create records in the business systems of the other, and one owner would have to trust the other to collect and reimburse the appropriate amount. Setting aside the operational impossibilities, this proposal would likely do little to expedite attachments in any event. Attachers typically must work with two pole owners for most jobs anyway. Solely-owned poles are often sprinkled throughout the service area that joint pole owners share in common. It is an exception that attachment applications involving jointly owned poles do not include at least some solely-owned poles. As a result, two utilities would be involved in the deployment even if only one managed particular poles in the system.

> where a pole is jointly owned and the owners have adopted different standards regarding the use of boxing, bracketing, or other attachment techniques, the joint owners may apply the more restrictive standards …. In order to avoid a claim that their terms and conditions for access are unjust, unreasonable or discriminatory, joint pole owners should settle on and apply a single set of standards – not different sets at different times.[44]

This ruling could be interpreted to require both owners to agree on the proper standard to apply to jointly-owned poles. Instead, on reconsideration, the Commission should allow either joint owner to insist that both joint owners apply the more restrictive standard to all poles that are jointly owned. In joint ownership relationships, each owner must be entitled to disapprove of any third-party attachment technique. Thus, if one owner does not approve of boxing in a certain circumstance, then the other joint owner should be required to comply with that restriction.

VI. PROHIBIT REFUNDS EARLIER THAN THE EFFECTIVE DATE OF THE APRIL 7 ORDER

In the April 7 Order, the Commission amended Rule 1.1410(c) "to allow monetary recovery in a pole attachment action to extend as far back in time as the applicable statue of limitations allows."[45] In essence, however, this new requirement re-writes the Commission's rules and provides new liability for pole owners after the fact.

As explained in the *Coalition's* Comments, permitting attachers to recover refunds dating back years before a complaint is filed eliminates any incentive for them to resolve rate issues in a timely manner.[46] For that reason alone, the Commission should reconsider its ruling that refunds can date back to the statute of limitations.

[44] April 7 Order, at ¶ 228.
[45] April 7 Order, at ¶ 112.
[46] August 17 Comments, at 93.

Prior to this ruling, neither utility pole owners nor attaching entities had any expectation that refunds could date back further than the date of a complaint. To avoid an unexpected and unjust result, the Commission on reconsideration should clarify that refunds cannot date back further than the effective date of its new rules.

VII. CONCLUSION

WHEREFORE, THE PREMISES CONSIDERED, the *Coalition of Concerned Utilities* urges the Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

COALITION OF CONCERNED UTILITIES

Consumers Energy
Detroit Edison
FirstEnergy Corp.
Hawaiian Electric Co.
NSTAR
Pepco Holdings, Inc.

By: _____

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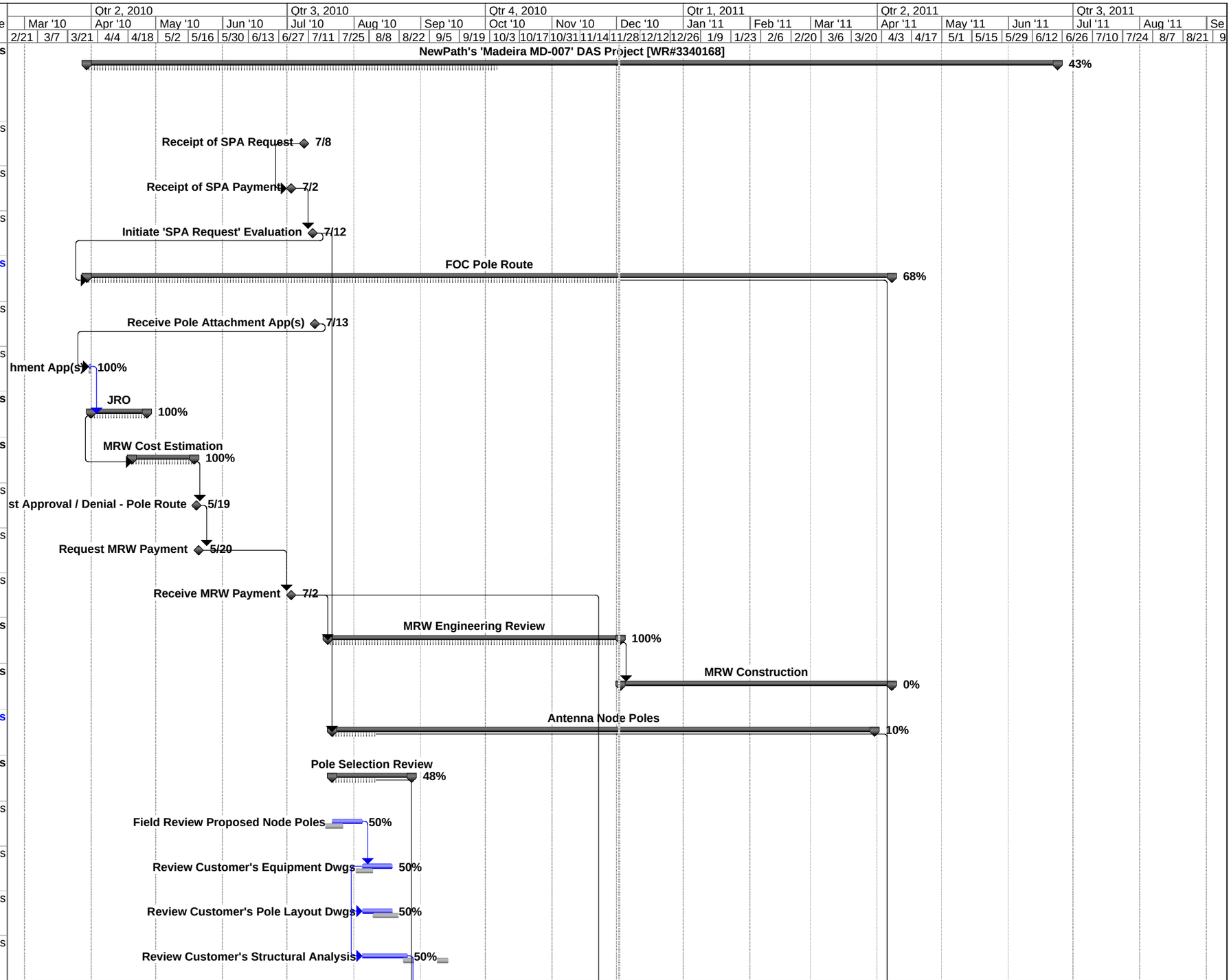
EXHIBIT A

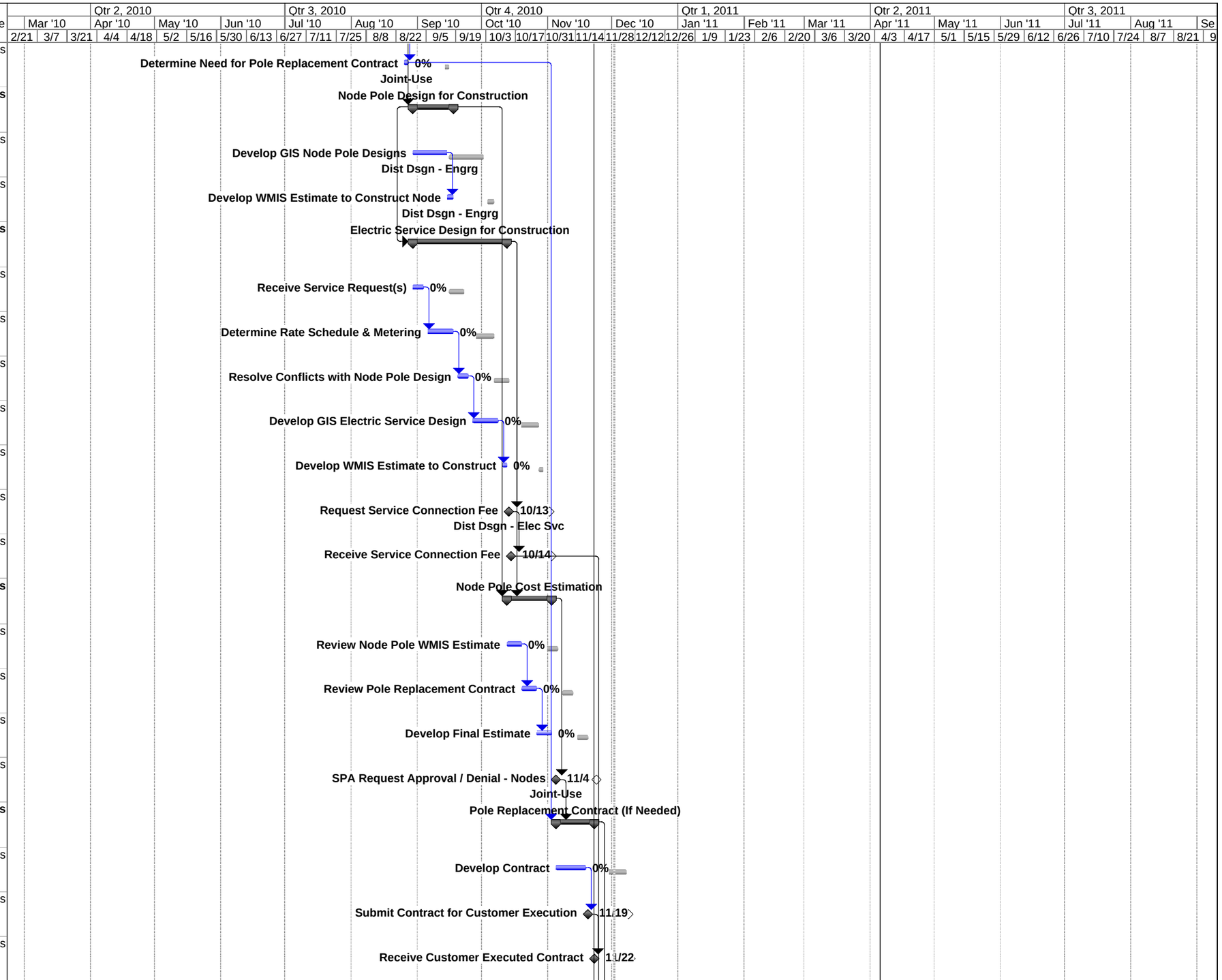
ID	Task Name	Duration	Start Variance	Finish Variance
1	**NewPath's 'Madeira MD-007' DAS Project [WR#3340168]**	**323 days?**	**0 days**	**-7 days**
2	Receipt of SPA Request	1 day	0 days	0 days
3	Receipt of SPA Payment	1 day	0 days	0 days
4	Initiate 'SPA Request' Evaluation	1 day	0 days	0 days
5	**FOC Pole Route**	**268 days?**	**0 days**	**23 days**
6	Receive Pole Attachment App(s)	2 days	0 days	0 days
7	Review Pole Attachment App(s)	1 day	0 days	0 days
8	**JRO**	**18 days**	**0 days**	**0 days**
11	**MRW Cost Estimation**	**21 days**	**0 days**	**0 days**
15	SPA Request Approval / Denial - Pole Route	1 day	0 days	0 days
16	Request MRW Payment	1 day	0 days	0 days
17	Receive MRW Payment	1 day	0 days	0 days
18	**MRW Engineering Review**	**98 days?**	**0 days**	**23 days**
25	**MRW Construction**	**90 days?**	**23 days**	**23 days**
29	**Antenna Node Poles**	**180 days?**	**7 days**	**-13 days**
30	**Pole Selection Review**	**27 days?**	**7 days**	**-13 days**
31	Field Review Proposed Node Poles	10 days	7 days	7 days
32	Review Customer's Equipment Dwgs	10 days?	7 days	7 days
33	Review Customer's Pole Layout Dwgs	10 days?	-3 days	-3 days
34	Review Customer's Structural Analysis	15 days?	-13 days	-13 days



Project: NewPath's 'Madeira MD-007'
Date: Thu 12/2/10

Critical | Task | Baseline | Milestone | Project Summary | Deadline
Critical Split | Split | Baseline Split | Summary Progress | External Tasks
Critical Progress | Task Progress | Baseline Milestone | Summary | External Milestone

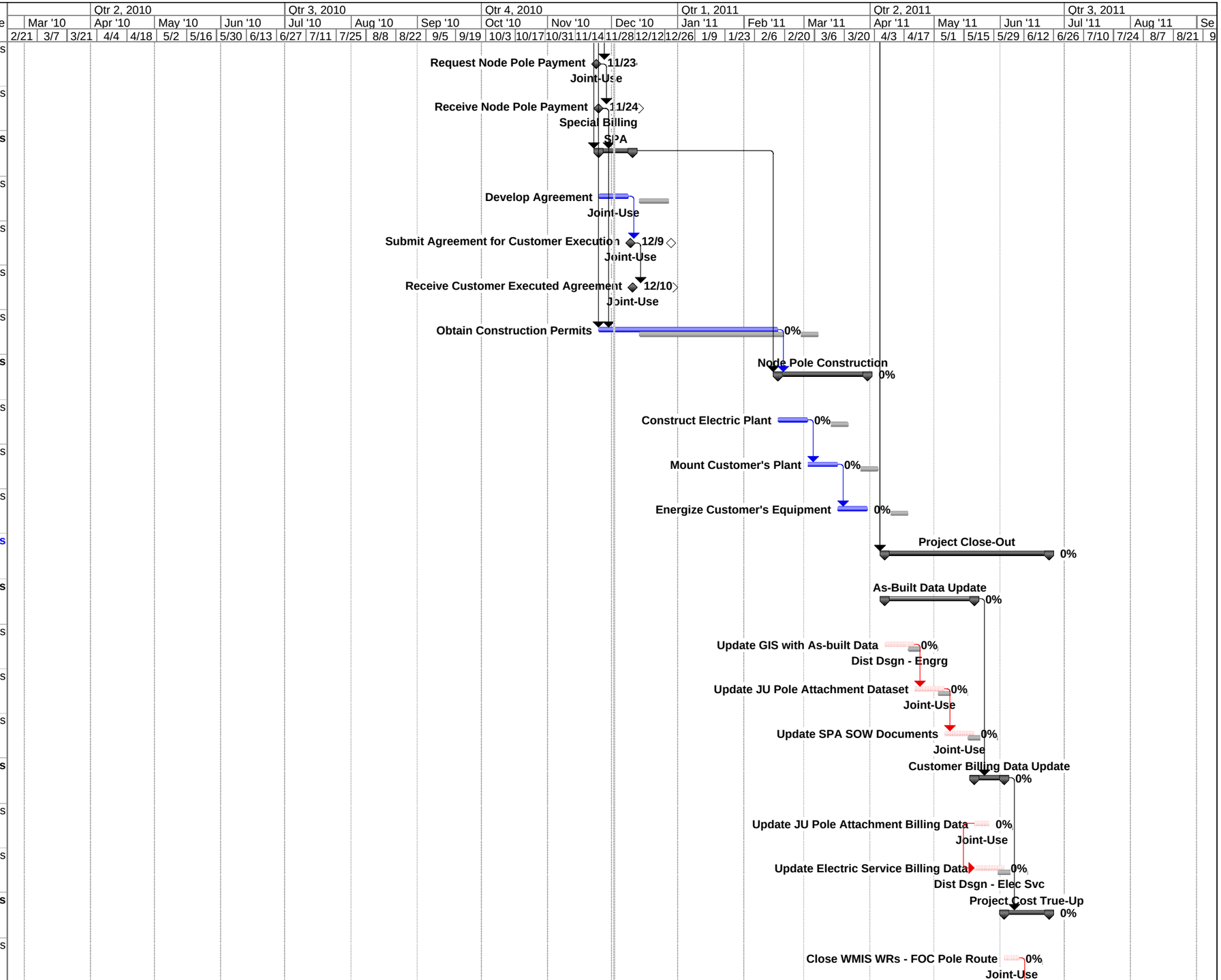
ID		Task Name	Duration	Start Variance	Finish Variance
35		*Determine Need for Pole Replacement Contract*	2 days?	-13 days	-13 days
36		**Node Pole Design for Construction**	**15 days?**	**-13 days**	**-13 days**
37		Develop GIS Node Pole Designs	12 days?	-13 days	-13 days
38		Develop WMIS Estimate to Construct Node	3 days?	-13 days	-13 days
39		**Electric Service Design for Construction**	**32 days?**	**-13 days**	**-13 days**
40		Receive Service Request(s)	5 days?	-13 days	-13 days
41		Determine Rate Schedule & Metering	10 days?	-13 days	-13 days
42		Resolve Conflicts with Node Pole Design	5 days?	-13 days	-13 days
43		Develop GIS Electric Service Design	10 days?	-13 days	-13 days
44		Develop WMIS Estimate to Construct	2 days?	-13 days	-13 days
45		Request Service Connection Fee	1 day?	-13 days	-13 days
46		Receive Service Connection Fee	1 day?	-13 days	-13 days
47		**Node Pole Cost Estimation**	**15 days?**	**-13 days**	**-13 days**
48		Review Node Pole WMIS Estimate	5 days?	-13 days	-13 days
49		Review Pole Replacement Contract	5 days?	-13 days	-13 days
50		Develop Final Estimate	5 days?	-13 days	-13 days
51		SPA Request Approval / Denial - Nodes	2 days?	-13 days	-13 days
52		***Pole Replacement Contract (If Needed)***	**12 days?**	**-13 days**	**-13 days**
53		*Develop Contract*	10 days?	-13 days	-13 days
54		*Submit Contract for Customer Execution*	1 day?	-13 days	-13 days
55		*Receive Customer Executed Contract*	1 day?	-13 days	-13 days



Project: NewPath's 'Madeira MD-007'
Date: Thu 12/2/10

Critical	Task	Baseline	Milestone	Project Summary	Deadline
Critical Split	Split	Baseline Split	Summary Progress	External Tasks	
Critical Progress	Task Progress	Baseline Milestone	Summary	External Milestone	

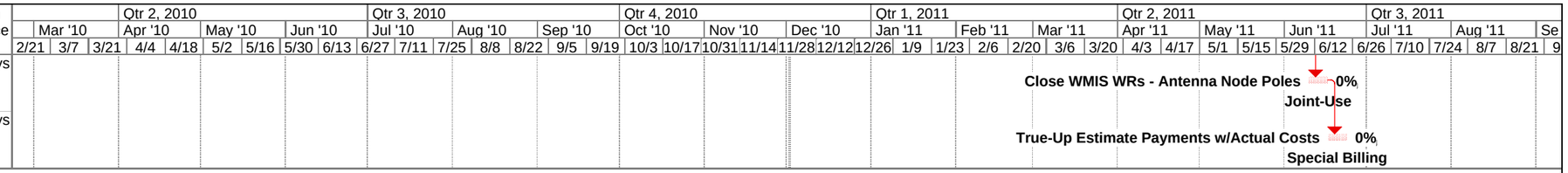
ID	Task Name	Duration	Start Variance	Finish Variance
56	Request Node Pole Payment	1 day?	-13 days	-13 days
57	Receive Node Pole Payment	1 day?	-13 days	-13 days
58	**SPA**	**12 days?**	**-13 days**	**-13 days**
59	Develop Agreement	10 days?	-13 days	-13 days
60	Submit Agreement for Customer Execution	1 day?	-13 days	-13 days
61	Receive Customer Executed Agreement	1 day?	-13 days	-13 days
62	Obtain Construction Permits	60 days?	-13 days	-13 days
63	**Node Pole Construction**	**30 days?**	**-13 days**	**-13 days**
64	Construct Electric Plant	10 days?	-13 days	-13 days
65	Mount Customer's Plant	10 days?	-13 days	-13 days
66	Energize Customer's Equipment	10 days?	-13 days	-13 days
67	**Project Close-Out**	**55 days?**	**-7 days**	**-7 days**
68	**As-Built Data Update**	**30 days?**	**-7 days**	**-7 days**
69	Update GIS with As-built Data	10 days?	-7 days	-7 days
70	Update JU Pole Attachment Dataset	10 days?	-7 days	-7 days
71	Update SPA SOW Documents	10 days?	-7 days	-7 days
72	**Customer Billing Data Update**	**10 days?**	**-7 days**	**-7 days**
73	Update JU Pole Attachment Billing Data	5 days?	-7 days	-7 days
74	Update Electric Service Billing Data	10 days?	-7 days	-7 days
75	**Project Cost True-Up**	**15 days?**	**-7 days**	**-7 days**
76	Close WMIS WRs - FOC Pole Route	5 days?	-7 days	-7 days



Project: NewPath's 'Madeira MD-007'
Date: Thu 12/2/10

Critical
Critical Split
Critical Progress
Task
Split
Task Progress
Baseline
Baseline Split
Baseline Milestone
Milestone
Summary Progress
Summary
Project Summary
External Tasks
External Milestone
Deadline

ID		Task Name	Duration	Start Variance	Finish Variance
77		Close WMIS WRs - Antenna Node Poles	5 days?	-7 days	-7 days
78		True-Up Estimate Payments w/Actual Costs	5 days?	-7 days	-7 days



Project: NewPath's 'Madeira MD-007'
Date: Thu 12/2/10

Critical	Task	Baseline	Milestone	Project Summary	Deadline
Critical Split	Split	Baseline Split	Summary Progress	External Tasks	
Critical Progress	Task Progress	Baseline Milestone	Summary	External Milestone	

EXHIBIT B

List of Companies for Which FirstEnergy
Has Entered Into Mutual Assistance Agreements

- Mid-Atlantic Mutual Assistance Group (MAMA)
  - Duquesne Light
  - BGE
  - PECO
  - Orange & Rockland, Pike County Light & Power Co., Rockland Electric Company
  - Pepco Holdings, Inc.
  - PSEG
  - PPL
- Great Lakes Mutual Assistance Group (GLMA)
  - AEP
  - Consumers Energy
  - DP&L
  - DTE Energy
  - ComEd
  - Duke Energy
  - NIPSCO
  - ITC
  - Vectren
  - LG&E
  - KU
  - WE
  - IPL
- New York Mutual Assistance Group (NYMAG)
  - Central Hudson
  - conEdison
  - NYSEG
  - RG&E
  - NationalGrid
  - Orange & Rockland, Pike County Light & Power Co., Rockland Electric Company
  - Northeast Utilities
- Southeastern Electric Exchange (SEE)
  - AEP
  - CenterPoint Energy
  - CLECO
  - BGE
  - DP&L
  - Entergy
  - PPL
  - Pepco Holdings, Inc.
  - SCE&G
  - Progress Energy
  - Florida Public Utilities
  - TECO
  - TNMP
  - Southern Company